

Remarks

In view of the above amendments and the following remarks, reconsideration of the outstanding office action is respectfully requested.

Applicants would like to thank Examiner Mehta for the courtesy extended to applicant's undersigned representative during telephone interviews conducted on March 10 and March 15, 2004. The U.S. Patent and Trademark Office ("PTO") initiated the above telephone interviews for purposes of discussing clarifying amendments that would place the application in condition for allowance. In particular, the PTO requested that the language of claim 4 be amended to recite that the DNA molecule encoding the nontranslatable messenger RNA be identified more particularly. Consistent with language agreed upon during the telephone interviews, applicants have amended the language of claim 4 to recite that the DNA molecule is "modified from a form encoding a nucleocapsid protein of an L serogroup *Tospovirus*." Applicants have also amended the preamble of claim 9 to harmonize the preamble with the result recited in the 'wherein' clause (of the 'transcribing' step) of claim 9.

The PTO indicated that applicants' prior response to the obviousness-type double patenting rejection of claims 4-9 over claims 2-6 and 8-22 of U.S. Patent No. 6,329,568 to Gonsalves et al. ("Gonsalves") was insufficient. While applicants disagree with the PTO conclusion, the rejection is rendered moot by the accompanying Terminal Disclaimer. Therefore, this rejection should be withdrawn.

As identified in the response filed on December 17, 2004, applicants respectfully request that the PTO provide a form PTO 892 listing Peters et al., "The Biology of Tospoviruses" *In: Pathogenesis and Host Specificity in Plant Diseases*, vol III, Viruses and viroids. R.P. Singh, U.S. Singh and K. Kohmoto (Eds.), Pergamon Press (1995), with the next office action. The PTO has already considered the reference and applicants previously identified the reference in a timely filed Information Disclosure Statement.


Serial No. 09/426,783

- 5 -

In view of all of the foregoing, applicant submits that this case is in condition for allowance and such allowance is earnestly solicited.

Respectfully submitted,

Date: March 15, 2004


Edwin V. Merkel
Registration No. 40,087

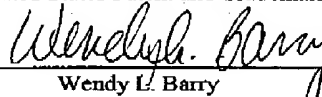
NIXON PEABODY LLP
Clinton Square, P.O. Box 31051
Rochester, New York 14603-1051
Telephone: (585) 263-1128
Facsimile: (585) 263-1600

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being:

- ☐ deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop _____, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450
- ☒ transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (703) 872-9306.

3/15/04
Date


Wendy L. Barry

R755545.1